

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MBT HOLDING AG;
SKW-MBT MANAGEMENT, INC.;
CHEMREX, INC.; and
MASTER BUILDERS, INC.

Opposition No. 125,288

AMERICAN POLYMER CORPORATION)
DBA POLYCOAT PRODUCTS)

BOX TTAB NO FEE
Commissioner of Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

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2. On or about April 3, 2002, Opposers received their copy from the Trademark Trial and Appeal Board, along with a schedule of the discovery and testimony periods (Exhibit 1);

3. Upon information and belief, the copy of Opposers' Notice of Opposition and schedule mailed to Applicant were not returned to the Trademark Trial and Appeal Board as undeliverable (Exhibit 2);

4. More than Forty-Five (45) days have passed since the mailing of the copy of Opposers' Notice of Opposition to Applicant, yet Applicant has not filed an Answer (Exhibit 2);

5. On or about May 10, 2002, undersigned counsel for Opposers also mailed a copy of the Notice of Opposition and schedule to attorneys of record for Applicant, requesting that said attorneys contact him (Exhibit 3);

6. More than Fourteen (14) days have passed since undersigned counsel for Opposers mailed a copy of the Notice of Opposition and schedule, yet he has received no response from attorneys of record for Applicant (Exhibit 3); and

7. Pursuant to 37 CFR §2.106(a), and FRCP 55(a), (b) and (c), default judgment may be entered against Applicant in the absence of a showing of good cause by Applicant why default judgment should not be entered against it.

BRIEF IN SUPPORT

37 CFR § 2.106(a) provides:

If no answer is filed within the time set [by the Trademark Trial and Appeal Board in the Notification of Opposition Proceeding as provided in 37 CFR § 2.105], the opposition may be decided as in the case of default.

FRCP 55(a) provides:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

FRCP 55(b)(2) provides, in relevant part:

....the party entitled to a judgment by default shall apply to the court therefor....

Here, Opposers seek judgment that registration of Application Serial No. 75/531,404 for the mark POLY-U-CRETE be denied. It is stated in the Notice of Opposition that Opposers, are the current owner, licensee, and licensed users of the following valid and existing United States Federal trademark registrations:

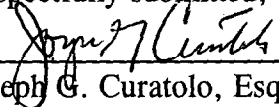
<u>Trademark</u>	<u>Reg. No.</u>	<u>Registration Date</u>	<u>Goods</u>
UCRETE	1,030,416	January 20, 1976	Chemical products - namely, polymers for use in the manufacture of polymeric concrete.
UCRETE	1,067,206	June 7, 1977	Non-metallic aggregate for use in making polymeric concrete

It is also stated therein that a true copy of the above listed United States trademark registrations are attached to the Notice of Opposition as Exhibits 1 and 2. Opposers also state in the Notice of Opposition, that Opposers, or a predecessor in interest, have used the valid and existing United States Federal trademark registrations for the marks UCRETE, listed above, in interstate commerce in connection with the stated goods since at least the date of registration, which is before Applicant's first use of the mark POLY-U-CRETE and first use of the mark POLY-U-CRETE in commerce. It is also set forth in the Notice of Opposition, that Opposers have extensively advertised and widely distributed the goods listed above under the marks UCRETE, developing exceedingly valuable goodwill and consumer recognition throughout the United States with respect to the marks UCRETE.

As Applicant has failed to timely deny these statements of Applicant, and as Applicant's mark POLY-U-CRETE and Opposers' registered marks UCRETE are essentially identical with essentially the same spelling, pronunciation, and commercial impression, Applicant's use of the mark POLY-U-CRETE for its goods is such that it will create or is likely to create confusion, deception, or mistake among purchasers as to the source of Applicant's goods. Consequently, Opposers should be granted default judgment in the present Opposition, such that registration of Application Serial No. 75/531,404 for the mark POLY-U-CRETE is denied.

WHEREFORE, Opposers pray for default judgment in the present Opposition, such that registration of Application Serial No. 75/531,404 for the mark POLY-U-CRETE is denied.

Respectfully submitted,



Joseph G. Curatolo, Esq. (Reg. No. 28,837)
Renner, Kenner, Greive, Bobak, Taylor & Weber
24500 Center Ridge Road, Suite 280
Westlake, Ohio 44145
Telephone: (440) 808-0011
Facsimile: (440) 808-0657
Attorney for Opposers

5-31-2002

Date

EXHIBIT 1

RECEIVED

APR 1 2002

RECEIVED
ECSAK, TULLING & NEELER

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

MAILED

MAR 28 2002

PAT. & T.M. OFFICE

Opposition No. 125,288

Serial No. 75/531,404

MBT Holdings AG; SKW-MBT
Management, Inc.;
Chemrex, Inc; and Master
Builders, Inc.

Defendant's attorney:

v.

Kit M Stetina
Stetina Brunda Garred & Brucker
24221 Calle De La Loiusa
4th Floor
Laguna Hills, CA 92653-7602

American Polymer
Corporation d/b/a
Polycoat Products

Opposers, MBT Holdings AG, SKW-MBT Management, Inc, Chemrex, Inc and Master Builders, Inc., filed a notice of opposition to registration of the mark shown in application Serial No. 75/531,404 on **May 1, 2000**, thereby commencing this proceeding. Fed. R. Civ. P. 3 and Trademark Rule 2.106(a). A copy of the pleading is forwarded herewith to applicant's attorney.

Subsequently, as permitted by Fed. R. Civ. P. 15(a) and Trademark Rule 2.107, opposer filed an amended notice of opposition on **July 7, 2000**. A copy of the amended pleading is also forwarded herewith to applicant's attorney.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64. A copy of the recent amendments to the Trademark Rules, as

well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

ANSWER TO THE AMENDED OPPOSITION IS DUE FORTY DAYS after the mailing date hereof. (See Patent and Trademark Rule 1.7 for expiration dates falling on Saturday, Sunday, or a holiday).

Discovery and testimony periods are set as follows:

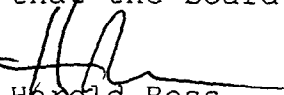
Discovery period to open:	April 17, 2002
Discovery period to close:	October 14, 2002
30-day testimony period for party in position of plaintiff to close:	January 12, 2003
30-day testimony period for party in position of defendant to close:	March 13, 2003
15-day rebuttal testimony period for plaintiff to close:	April 27, 2003

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "*Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board*," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.


Harold Ross
Legal Assistant,
Trademark Trial and
Appeal Board
(703) 308-9330, ext. 233

cc: Plaintiff's attorney's
Joseph G. Curatolo
Renner, Kenner, Grieve, Bobak, Taylor & Weber
24500 Center Ridge Road, Suite 280
Westlake, Ohio 44145

Adversary Proceeding Data

Proceeding Number: 91125288
Proceeding Status and Date: Pending 2002-03-28
Interlocutory Attorney Name: JYLL S TAYLOR
Proceeding Location: 849 - TTAB
Proceeding Location Date: 2002-05-17
Proceeding Charged To Location: 85D - TTAB Team A Potential Pending Shelf
Proceeding Charged To Employee Name:
Date Proceeding Filed: 2000-05-01

Prosecution History

Entry#	Entry Date	Due Date	History Text
3	2002-03-28		PENDING, INSTITUTED
2	2002-03-28	2002-05-07	NOTICE AND TRIAL DATES SENT; ANSWER DUE:
1	2000-05-01		FILED AND FEE

Defendant Name Information:

AMERICAN POLYMER CORPORATION D/B/A POLYC OAT PRODUCTS
Correspondence Address:
KIT M. STETINA
STETINA BRUNDA GARRED & BRUCKER
24221 CALLE DE LA LOIUSA 4TH FLOOR
LAGUNA HILLS, CA 92653--7602

Defendant Property Information:

Serial Number: 75531404
Registration Number: 0
International Classes: 002
Application Status: 774 - Opposition pending
Application Status Date: 2002-03-28
Application Location: 650 - Publication And Issue Section
Application Date in Location: 1999-12-22
Law Office Assigned: L50 - TMEG Law Office 105
Attorney: Kit M. Stetina
Domestic Representative:
Application Charged to Location:
Application Charged to Employee:
Registration Date:
Examiner Name: JOHN E MICHOS
Mark: POLY-U-CRETE
Application Filing Date: 1998-08-05

Plaintiff Name Information:

MBT HOLDINGS AG; SKW-MBT MANAGEMENT, INC ; CHEMREX, INC; AND
MASTER BUILDERS, INC .

Correspondence Address:

JOSEPH G. CURATOLO

RENNER, KENNER, GRIEVE, BOBAK, TAYLOR & WEBER

24500 CENTER RIDGE ROAD, SUITE 280

WERSTLAKE, OH 44145

Plaintiff Property Information:

Serial Number: 73032609

Registration Number: 1030416

International Classes:

Application Status:

Application Status Date:

Application Location:

Application Date in Location:

Law Office Assigned:

Attorney:

Domestic Representative:

Application Charged to Location:

Application Charged to Employee:

Registration Date:

Examiner Name:

Mark: UCRETE

Application Filing Date:

EXHIBIT 3

**RENNER KENNER GREIVE
BOBAK TAYLOR & WEBER**

A LEGAL PROFESSIONAL ASSOCIATION

Intellectual Property Law

Established 1917

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LAURA J. GENTHORE
SHANNON V. McCUE
SALVATORE A. SIKOTI
JOHN J. CUNNIFF
MARK L. WEBER
DANIEL J. SCHLUE
JAMES E. OEHLenschLAGER

SYLVIA PETROSKY, of counsel

Technical Specialists
TAMA L. DRENSKI
CHRISTOPHER J. KORFF

May 10, 2002
Via U.S. First Class Mail

*ADMITTED TO PENNSYLVANIA BAR

Stetina, Brunda, Garred & Brucker
24221 Calle De La Louisa
4th Floor
Laguna Hills, California 92653-7602
Attn: Kit M. Stetina

Re: Polycoat Products/American Polymer Corporation
MBT Holding AG, Degussa Construction Chemicals, Inc. (f.k.a. SKW-MBT
Management, Inc.), Master Builders, Inc. and ChemRex Inc.
Trademark Opposition No. 125,288

Dear Sirs:

As you should be aware from service by the United States Patent and Trademark Office ("Trademark Office"), we represent MBT Holding AG, Degussa Construction Chemicals, Inc., f.k.a. SKW-MBT Management, Inc., Master Builders, Inc. and ChemRex Inc., with respect to their opposition to the application of Polycoat Products ("Polycoat") to register the mark POLY-U-CRETE. A copy of the March 26, 2002 mailing from the Trademark Office and the notice of opposition are enclosed in the event that you have not yet been forwarded the documents.

Our clients and their predecessors in interest have owned and used the federally registered trademark UCRETE since 1976 in connection with sales in interstate commerce of polymers for use in the manufacture of polymeric concrete. A simple internet search reveals that Polycoat's products travel through the same channels of trade to the same purchasers, as you can see from the enclosed search. For these reasons, as well as the relatedness of the products and similarity of the marks POLY-U-CRETE and UCRETE, themselves, it is our clients' belief that Polycoat's use of the mark POLY-U-CRETE will result in a likelihood of confusion as to the source of its product.

Offices in

AKRON

CLEVELAND/WESTLAKE

WOOSTER


RENNER KENNER GREIVE BOBAK TAYLOR & WEBER

Stetina, Brunda, Garred & Brucker

May 10, 2002
page 2

Please advise the undersigned whether Polycoat has any interest in negotiating a settlement of this matter so that both parties might avoid the cost associated with an opposition proceeding. If Polycoat is willing to abandon its application and cease any use of the mark POLY-U-CRETE, our clients would be willing to allow Polycoat a reasonable period of time in which to phase out its use.

Very truly yours,



Joseph G. Curatolo

JGC/LJG
enc.



TTAB

06-03-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #26

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of: Application Serial No.: 75/531,404
Filed on: August 5, 1998
For the mark: POLY-U-CRETE
Published in the *Official Gazette* (Trademarks) on: February 1, 2000

MBT HOLDING AG;)
SKW-MBT MANAGEMENT, INC.;)
CHEMREX, INC.; and)
MASTER BUILDERS, INC.)

Opposers)

v.)

AMERICAN POLYMER CORPORATION)
DBA POLYCOAT PRODUCTS)

Applicant)

Opposition No. 125,288

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TRADEMARK TRIAL AND
APPEAL BOARD

BOX TTAB NO FEE
COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DRIVE
ARLINGTON, VIRGINIA 22202-3513

Certificate of Mailing

I hereby certify that this correspondence is being deposited on the date shown below with the United States Postal Service as first class mail in an envelope with sufficient postage addressed to: BOX TTAB NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Laura A. Ref.
Printed Name

Laura A. Ref.
Signature

5-31-02
Date

TRANSMITTAL SHEET

Enclosed is:

Transmittal Sheet with Certificate of Mailing and Authorization to Charge Deposit Account

Motion for Default Judgment for Failure to Answer (with Exhibits) - in duplicate

Return Receipt Postcard

Authorization to Charge Deposit Account

In the event an additional fee is applicable to the filing of this document and the required fee is not enclosed, or the fee submitted is insufficient, the Commissioner is hereby authorized to charge any fees for Docket No. CRX.C.1180 which might be required to effect the filing of this (these) document(s) to Account No. 18-0987.

Respectfully submitted,

Joseph G. Curatolo
Joseph G. Curatolo, Esq. (Reg. No. 28,837)
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24500 Center Ridge Road, Suite 280
Westlake, Ohio 44145
Telephone: (440) 808-0011
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Attorney for Opposers

5-31-2002

Date

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Applicant)

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COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DRIVE
ARLINGTON, VIRGINIA 22202-3513

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I hereby certify that this correspondence is being deposited on the date shown below with the United States Postal Service as first class mail in an envelope with sufficient postage addressed to: BOX TTAB NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Laura A. Roth Laura A. Roth 5-31-02
Printed Name Signature Date

TRANSMITTAL SHEET

Enclosed is:
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Respectfully submitted,

Joseph G. Curatolo
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Attorney for Opposers

5-31-2002
Date